IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 192 of 2003

BHADER SAIN & ANR
V/S
STATE OF RAJ & ORS

Mr. GJ GUPTA, for the appellant / petitioner

Mr. HR SONI, ADDL.G.A., for the respondent

Date of Order : 10.7.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

Heard learned counsel for the appellants.

It is contended by the learned counsel for the appellant, that under the Rules framed for supply of water for orchards, the water supply could be ordered to be disconnected only by the Chief Engineer, while in the present case the order has been passed by the Executive Engineer, which is wholly without jurisdiction, and therefore, the suit, as filed, was required to be decreed. The other submission made is, that the order has been passed even by the Executive Engineer without giving any opportunity of hearing, and the learned trial court, while deciding issue no.2, comprehending this controversy, had decided the issue in favour of the appellant, still the suit has been dismissed, and even without any appeal, or any cross objection on the side of the respondent, assailing the finding of the learned trial court on issue

no.2, the learned lower Appellate Court was in error in deciding this issue also against the appellants, by holding, that in his opinion it cannot be said that there has been any violation of principles of natural justice, and thus the impugned judgments are liable to be set aside.

I have considered the submissions. Taking the second argument first, of course, issue no. 2 comprehended the question, as to whether there has been a violation of principles of natural justice on account of the Executive Engineer not giving any opportunity of hearing to the plaintiff, and the learned trial court did find, that admittedly before ordering disconnection of water supply opportunity of hearing was not given to the appellant by way of notice. Thus, the issue was decided in favour of plaintiff. In my view, even the learned lower Appellate Court has not found, that notice was given to the appellant, and since the issue no.2 comprehended two aspects, being non giving of notice, and violation of principles of natural justice, and since the learned trial court had decided the aspect of violation of principles of natural justice, only on the basis of non giving of notice, while the learned lower Appellate court has found, in the totality of circumstances, that the plaintiff has not even been able to establish, that at the time of filing of the suit, or even at the time of passing of the impugned order, any orchard existed, rather found, that no orchard at all

existed. Predominantly, considering this aspect, and considering the attending circumstances, it was found, that it cannot be said, that there has been violation of principles of natural justice. In that view of the matter, I do not find much substance in this argument. It is a different story, that I also asked the learned counsel, time and again, to show, any material on record, reliable or unreliable, which may show, that the orchard ever existed at the time of filing of the suit. However the learned counsel could not point out any such material. In my view, rather from the perusal of the entire record, it transpires, that there is nothing even to whisper, as to what were the nature of all plants, and of what density, much less total number of plants. In that view of the matter, I do not find any error in the aspect of alleged violation of principles of natural justice.

So far the question of jurisdiction of passing the order, debarring irrigation is concerned, a look at Rule 9 shows that, that relates only to debarment of additional supply of water in the orchards, while in the present case, the action has been taken under Rule 10 of the Rajasthan Irrigation and Drainage Rules, 1955, and for taking such action, Executive Engineer is competent, and he has passed the order after taking previous approval of the Superintending Engineer.

In that view of the matter, this objection also does not hold good.

No other point was argued.

Thus, the appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/